

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 272 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

ARUNA MILLS LIMITED

Appearance:

MR RP BHATT for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 10/05/99

ORAL JUDGEMENT

1. Following question of law have been referred to this Court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench A at the instance of CIT, Gujarat I Ahmedabad which arose out of its order in Income Tax Application No. 163/Ahd/82 for the assessment year 1979-80 of the respondent assessee:

"Whether on the facts and in the circumstances of the case the Tribunal was right in law in coming to the conclusion that the cash payment of house rent allowance did not form part of salary for the purpose of Section 40A(5) of the I.T. Act, 1961?"

2. The facts found by the Tribunal as appear from the appeal is that the assessee paid to its employee in cash house rent allowance. The Income Tax Officer has disallowed the same by extending the provisions of Section 40A(5). The assessing officer has restricted the deduction on account of such cash payment by invoking provisions of Section 40A(5) of the Income Tax Act, 1961. Tribunal held that the cash payments made are not covered by Section 40A(5).

3. At the time of hearing it has been pointed out by the learned counsel for the revenue that the Supreme Court in CIT v. Mafatlal Gangabhai Co. (P) Ltd. 219 ITR 644 affirming the decision of the Bombay High Court has held that payments made in cash are not covered by Section 40(A)(5) and 40a(v).

4. Following the aforesaid decision, this court in CIT v. Aruna Mills 201 ITR 84 decided on 10.2.99 has upheld the decision of the Tribunal that the cash payment of house rent allowance is not covered by Section 40A(5) of the Income Tax Act, 1961.

5. In view of the aforesaid decision of the Tribunal must be upheld to be in accordance with the law laid down by the Supreme court.

6. Accordingly the questions are answered in affirmative in favour of the assessee and against the revenue.

There shall be no order as to costs.

(Rajesh Balia,J) (A.R. Dave, J)